

BPS-186

March 17, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **04-2692**

UNITED STATES OF AMERICA

VS.

WILLIAM FRAZIER

(D.DEL. CRIM. NO. 99-CR-00007)

Present: RENDELL, FISHER and VAN ANTWERPEN, CIRCUIT JUDGES

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
 - (2) Appellee's response
- in the above-captioned case.

Respectfully,

Clerk

MMW/KCW/nf/ch

ORDER

The foregoing request for a certificate of appealability is denied, as Appellant has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Jurists of reason could not debate the District Court's resolution of Appellant's § 2255 motion, as expressed in the thorough analysis set forth in the District Court's memorandum opinion, because Appellant's claims are either meritless or procedurally barred. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). United States v. Booker, — U.S. —, 125 S. Ct. 738 (2005), is not retroactively applicable to cases on collateral review. Cf. United States v. Jenkins, 333 F.3d 151 (3d Cir. 2003) (holding that Apprendi is not retroactively applicable to cases on collateral review). See also Humphress v. United States, — F.3d —, 2005 WL 433191, at *4 (6th Cir. Feb. 25, 2005) (holding that Booker is not retroactively applicable to cases on collateral review); Varela v. United States, — F.3d —, 2005 WL 367095, at *3 (11th Cir. Feb. 17, 2005) (same); McReynolds v. United States, — F.3d —, 2005 WL 237642, at *1 (7th Cir. Feb. 2, 2005) (same).

By the Court,

/s/ D. Michael Fisher

Circuit Judge

Dated: April 26, 2005